

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) EB Docket No. 07-13
)
DAVID L. TITUS) FRN No. 0002074797
) File No. EB-06-IH-5048
)
Amateur Radio Operator and Licensee of)
Amateur Radio Station KB7ILD)

To: Richard L. Sippel
Chief Administrative Law Judge

ENFORCEMENT BUREAU'S
OPPOSITION TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS

1. On July 24, 2007, David L. Titus ("Titus") filed "David Titus' Motion to Compel Production of Documents." The Chief, Enforcement Bureau ("Bureau"), by her attorneys, hereby opposes Titus' request for relief.

2. Titus requests the Presiding Judge to issue an order directing the Bureau to produce all of the documents sought by Titus in his "First Request for Production of Documents" in this proceeding. Therein, Titus requested the Bureau to produce all documents identified or requested to be identified in David Titus' First Interrogatories to the Enforcement Bureau. The Bureau, on July 17, 2007, interposed a timely objection to Titus' document request on the basis that Section 1.325(b) of the Commission's Rules, 47 C.F.R. § 1.325(b), unequivocally prohibits requests of Commission records, except through the Freedom of Information Act ("FOIA").

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3. In his Motion to Compel, Titus essentially acknowledges that Section 1.325(b) renders his document request procedurally defective. Nevertheless, he claims that there are “factors which call for a different result in this case if this matter is to be decided fairly.” First, he argues that it would be too time consuming and expensive for him to avail himself of FOIA, and therefore the Presiding Judge should “exercise his discretion” and order the Bureau to turn over the Commission records that he seeks. Second, Titus argues that because the Bureau bears the burdens in this proceeding, it “should be required to support [its case] with clear factual and documentary evidence” which the Bureau should now produce on the basis of fairness and comity. Finally, Titus claims that by refusing to “voluntarily produce documents,” the Bureau is denying him the ability to defend himself at trial.


4. Titus’ arguments lack merit. Titus’ suggestion that this matter will not be decided fairly unless the Presiding Judge orders the Bureau to produce the requested documents is indefensible. Section 1.325(b) clearly requires Titus to seek documents, if at all, by availing himself of the Commission’s procedural rules implementing FOIA. Contrary to Titus’ claim, the FOIA process is not necessarily expensive or time consuming. Moreover, while the Presiding Judge has discretion in the manner in which he conducts hearing proceedings, he does not have the discretion to arbitrarily set aside rules of procedure -- such as those involving FOIA -- which are *outside* the hearing processes. Simply stated, the Commission’s rules implementing FOIA are not among the discovery procedures in hearing proceedings over which the Presiding Judge has authority. There also is no merit to Titus’ claim that, because the Bureau bears the burdens in this case, it should somehow overlook Section 1.325(b) and produce Commission documents during discovery. The Bureau will, along with Titus, exchange exhibits on the appropriate date set by the Presiding Judge for doing so, and it will present its case with clear documentary and

testimonial evidence at trial, in accordance with the Commission's procedural rules governing hearing proceedings. Finally, the Bureau is certain that the Presiding Judge will afford Titus every reasonable opportunity to present his case at trial. Titus' ability to defend himself will in no way be jeopardized by adhering to fundamental Commission procedural rules governing hearing proceedings, and his claim to the contrary is simply unsupported and exaggerated.


5. In sum, Titus must avail himself of the procedures implementing FOIA if he wishes to obtain Commission records, and his arguments to the contrary are entirely unavailing.

Accordingly, Titus' Motion to Compel must be denied.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary Schonman
Special Counsel
Investigations and Hearings Division



William Knowles-Kellett
Attorney
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

August 1, 2007

CERTIFICATE OF SERVICE

Barbara Britt, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 1st day of August 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Opposition to Motion to Compel Production of Documents" to:

Steven D. Brown, Esq.
Law Office of David S. Marshall
1001 4th Avenue, 44th Floor
Seattle, WA 98154
Counsel to David L. Titus

Chief Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054



Barbara Britt

* Hand-Delivered